

Appl. No. . : 09/379,704  
Filed : August 24, 1999

**REMARKS**

In response to the Office Action mailed December 2, 2002, Applicant respectfully requests the Examiner to reconsider the above-captioned application in view of the foregoing amendments and the following remarks.

**Claims 41-50 Are Patentable Over The Applied Combination**

Claims 41-50 have been rejected as unpatentable over Hawkinson et al. ('869) in view of Johnson et al. ('690). As Applicant reads the rejection, it appears that the Examiner is arguing that the prior art taught or suggested adding a pair of outwardly extending flanges to the bottom of the depending member 30 (Fig. 4) of Hawkinson et al. and that such a modification of Hawkinson et al. renders the rejected claims unpatentable. Applicant disagrees.

Nevertheless, the claims have been amended. Through this amendment, the claims recite, among other limitations, that the spacing between the outside flange and the inside arm or the spacing between the sliding surface and the inside flange is less than twice the thickness of the rail. Such a construction is shown in Figure 6 of the present application. The recited construction forms a positive lock between the product track and the pusher block (see Specification at page. 12, line 29- page 13, line 1).

To the contrary, Johnson et al. has specifically designed the supporting sleeves to be at least twice the thickness of the track due to the need to pass between the rear portion of the track and the front portion of the track (shown with the miters 74a and 74b in Figure 4). Such a construction results in a less secure connection between the plate member 12 and either the front portion or the rear portion of the track. In other words, in locations other than the doubled portion, the plate 12 can be easily lifted and rotated about a vertical axis, which rotation will disengage the downward flanges 54a, 54b of the plate 12 from the upward flanges 30a, 30b of the track.

Johnson et al. provides no other teaching regarding the spacing of the underlying portion of the supporting sleeves and Hawkinson et al. provides no teaching at all regarding any flanges. Thus, Claims 41-50 (and 3) are patentable over the applied combination. Reconsideration and allowance is respectfully requested.

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**New Claims Have Been Added**

Claims 51 and 52 have been added. The claims are directed to a relationship between a portion of the biasing member and the inner arms or inner flanges as disclosed in the Specification at page 13, lines 4-6. Allowance of these dependent claims is respectfully requested.

**Double Patenting**

Claims 41 and 45 are rejected over Claims 25, 35 and 38 of U.S. Patent No. 6,382,431 on the basis of the judicially created doctrine of double patenting. A terminal disclaimer is enclosed.

Claims 41-50 are rejected over the claim of D445,615 in view of Hawkinson et al. on the basis of the judicially created doctrine of double patenting. Applicant submits that the Examiner has not properly applied the test for double patenting in this instance. MPEP 804 states that the majority opinion in *Carman Industries* indicates that a two-way obviousness determination is necessary in design-utility situations. The Examiner has not construed the claim of the design patent and has not made an obviousness determination in either direction. Rather, the Examiner simply states that the design patent illustrates all limitations of a pusher block as claimed. Clearly, the design patent claim is directed to aesthetic features that are not recited in the claims of the utility application and that are not obvious over the features recited in the claims of the utility application. Reconsideration is respectfully requested.

**Drawings**

The Examiner has objected to the drawings under 37 C.F.R. § 1.83(a). In particular, the Examiner objects that the drawings must show every feature of the invention specified in the claims.

Rule 1.83(a) provides, in relevant part, that the "drawing in a nonprovisional application must show every feature of the invention specified in the claims." The rule only requires that the drawings show the claimed features; there is no requirement in the rule that the features each be identified by a reference numeral. Applicant submits that Figure 6, which already contains a large number of reference numerals, illustrates each of the following elements:

- "a first product supporting surface"
- "a first bottom surface"
- "a first outside edge surface"
- "a first inside edge surface"

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- "said first inside edge surface extending between said first product supporting surface and said first bottom surface"
- "a second product supporting surface"
- "a second bottom surface"
- "a second outside edge surface"
- "a second inside edge surface"
- "said second inside edge surface extending between said second product supporting surface and said second bottom surface"
- "an inner portion of said first bottom surface and an inner portion of said second bottom surface are lower than an outer portion of said first bottom surface and an outer portion of said second bottom surface"

Because each of these features are shown in Figure 6, no amendments to the drawings are necessitated by the explicit language of the rule. Reconsideration of the objection is requested.

### CONCLUSIONS

For the foregoing reasons, it is respectfully submitted that the rejections set forth in the outstanding Office Action are inapplicable to the present claims and specification. Accordingly, Applicant respectfully submits that the above-identified application is in condition for allowance, and therefore issuance of a Notice of Allowance is earnestly solicited.

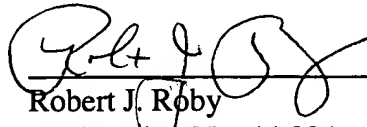
The undersigned has made a good faith effort to respond to all of the rejections and objections in the case, and to place the claims in condition for immediate allowance. Nevertheless, if any undeveloped issues remain or if any issues require clarification, the Examiner is respectfully requested to call Applicants attorney, Robert J. Roby at (949)721-6359 (direct line), in order to resolve such issues promptly.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

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